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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT P. MACAULAY,
MILOS VODSEDALEK,
and BRIAN B. EGAN

Appeal 2008-2099
Application 09/723,591
Technology Center 2600

Decided: August 8, 2008

Before ROBERT E. NAPPI, SCOTT R. BOALICK, and JOHN A.
JEFFERY, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-14, 16-23, 25-31, 33-35, 37-40, and 43-48. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

STATEMENT OF THE CASE

Appellants invented a method, system and article for controlling communications in a network. Specifically, the method, system and article include the step or structure for cloning a first terminal with a second terminal so that features and services available to a user in a local environment are also available to a user at a remote location. Cloning is achieved by associating the remote terminal with the logical port of the cloned terminal through a clone table. Multiple terminals can also be cloned within a single platform using soft client modules.¹ Claim 1 is illustrative:

1. A method of controlling communications in a network, comprising:

receiving a request to clone a first terminal with a second terminal;

in response to the request to clone, associating a logical identifier of the first terminal with the second terminal;

receiving a call request specifying the logical identifier of the first terminal, the call request to initiate a first call session;

in response to the call request, sending an alert indication to the second terminal regarding the first call session;

receiving a second indication from the second terminal for initiating a second call session with a third terminal;

in response to the second indication, accessing profile information associated with the first terminal to process the second indication for establishing the second call session between the second terminal and the third terminal.

¹ See generally Spec. 3:2-18, 7:1-26; 10:1-11:7, 12:1-23, and 13:8-22.

The Examiner relies on the following prior art references to show unpatentability:

Bozek	US 6,178,238 B1	Jan. 23, 2001 (filed Apr. 9, 1998)
O'Neal	US 6,263,064 B1	Jul. 17, 2001 (filed Jan. 29, 1999)
McClung	US 6,775,369 B1	Aug. 10, 2004 (filed Nov. 16, 1999)
Alexander	US 6,798,767 B1	Sep. 28, 2004 (filed Nov. 16, 1999)
Michalewicz	US 6,961,346 B1	Nov. 1, 2005 (filed Nov. 24, 1999)

Applicants' admitted prior art ("AAPA") and on page 2, ll. 18-25 of the present application.

The Examiner's rejections are as follows:

- (1) Claims 1-6, 8-13, 43, and 45-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McClung and Bozek;
- (2) Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McClung, Bozek, and AAPA;
- (3) Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McClung, Bozek, and Alexander;
- (4) Claims 37-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander and Michalewicz;
- (5) Claims 16-22 and 44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander and AAPA; and

(6) Claims 23, 25-31, and 33-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander, AAPA, and O’Neal.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs² and the Answer³ for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments, which Appellants could have made but did not make in the Briefs, have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

OPINION

Discussing the question of obviousness of a patent that claims a combination of known elements, the U.S. Supreme Court explains:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [v. *AG Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock[, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

² We refer to the Appeal Brief filed May 17, 2007, and the Reply Brief filed October 1, 2007, throughout this opinion.

³ We refer to the Examiner’s Answer mailed July 31, 2007, throughout this opinion.

KSR Int'l v. Teleflex, Inc., 127 S. Ct. 1727, 1740 (2007). If the claimed subject matter cannot be fairly characterized as involving the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness can be based on a showing that “there was an apparent reason to combine the known elements in the fashion claimed.” *Id.* at 1741. Such a showing requires,

‘some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

Id. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). If the Examiner’s burden is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Obviousness Rejection over McClung and Bozek

We first address the rejection of claims 1-6, 8-13, 43, and 45-48 under 35 U.S.C. § 103(a) as being unpatentable over McClung and Bozek. Appellants group the claims as follows: (1) claims 1, 2, 5, 6, 8-13, and 46;

(2) claim 45; (3) claims 3, 4, 43, and 48; and (4) claim 47 (App. Br. 5-12). Each grouping will be addressed separately.

Claims 1, 2, 5, 6, 8-13, and 46

Regarding representative claim 1⁴, the Examiner's rejection essentially finds McClung and Bozek teach all the limitation found in claim 1 (Ans. 4-5). Appellants argue: (1) neither McClung nor Bozek disclose a terminal being a clone of another terminal; (2) neither reference teaches processing an outgoing call from a second, cloned terminal to a third terminal; and (3) there is no teaching in the references to combine the references to meet the limitations of claim 1 (App. Br. 6-10; Reply Br. 2).

The issues before us are:

- (1) whether the collective teachings of McClung and Bozek teach: (a) receiving a request to clone a first terminal with a second terminal and (b) processing an outgoing call from a cloned terminal to another terminal; and
- (2) whether the references are properly combinable.

For the following reasons, we answer affirmatively to both of these questions.

Appellants argue that McClung describes the steps of call forwarding and not the cloning feature of claim 1 (App. Br. 7-8). We disagree. First, McClung explicitly states the user need not forward telephone calls due to the disclosed roaming line system (McClung, col. 2, ll. 19-24). McClung, thus, explains that the roaming line number feature is not the same as call

⁴ Appellants argue claims 1, 2, 5, 6, 8-13, and 46 as a group (App. Br. 5-9). Accordingly, we select claim 1 as representative of this grouping. *See* 37 C.F.R. § 41.37(c)(1)(vii).

forwarding. Second, using Appellants' definition of "clone" as explained below, McClung discloses the step of receiving a request to clone a first terminal with a second terminal as recited in claim 1.

The Specification defines "clone" as "a terminal that either takes the place of or is a replicate of another terminal" (Spec. 7:15-16). McClung discloses the steps of associating the first terminal (e.g., telephony device 24b) with a second terminal (e.g., telephony device 24a) when a remotely located user makes a request (McClung, col. 6, ll. 39-56 and col. 7, l. 37-col. 9, l. 12; Figs. 1, 4 and 5). McClung achieves this association by specifying an IP address of a second terminal (e.g., 24a) with a logical identifier (e.g., line number) of the first terminal (e.g., 24b) in a mapping table 110 (McClung, col. 6, l. 57 – col. 7, l. 5 and col. 9, ll. 7-12; Figs. 2-3). Notably, neither the definition of clone in the Specification nor the plain language of claim 1 requires the logical identifier to be a logical port. As the result of this mapping, the second terminal replicates the first terminal and will receive incoming calls made to the first terminal (McClung, col. 9, ll. 26-45). Alternatively, McClung discloses that one telephony device can take the place of the regularly assigned telephone device (McClung, col. 6, ll. 42-47). Thus, contrary to Appellants' assertion, McClung discloses a terminal being a clone of another terminal or the step of "receiving a request to clone a first terminal with a second terminal" and "in response to the request to clone, associating a logical identifier of the first terminal with the second terminal" as recited in claim 1.

Appellants also contend that "[n]o teaching is provided in either McClung or Bozek of processing an outgoing call from the second terminal (clone terminal) in the manner recited in claim 1" (App. Br. 8). We agree

that each reference, individually, does not teach all the recited elements of claim 1. One, however, cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). As the Examiner admits, McClung does not discuss the step of “receiving a second indication from the second terminal for initiating a second call session with a third terminal” as recited (Ans. 4). Bozek, however, teaches a method for allowing a user from a remote location to access the speed dial or profile information of a home terminal at step 207 (Bozek, col. 1, ll. 6-7 and col. 2, l. 45 – col. 3, l. 5; Fig. 2). In return, the user at the terminal can complete a call session with a third terminal at step 211 (Bozek, col. 3, ll. 22-39; Fig. 2). When the Bozek speed dial feature is implemented with the method of McClung, as the Examiner proposes (Ans. 5), the second and cloned terminal disclosed by McClung will initiate a second call session with the third terminal and, thus, the combination will process an outgoing call from a cloned terminal as recited.

We also disagree with Appellants’ assertion that “[t]he Examiner has clearly failed to identify a reason that would have prompted a person of ordinary skill in the art to combine the teachings of McClung and Bozek in the manner proposed by the Examiner” (App. Br. 9). Bozek describes a feature that permits a user located remotely to use a remote terminal to access speed dial information of a home terminal when the user cannot remember the full number of the party he or she wishes to reach (Bozek, col. 1, ll. 15-39; Ans. 5). This teaching would have reasonably suggested to one of ordinary skill in the art that the speed dial feature of Bozek would improve the McClung system in a similar manner by allowing the remote

user of the McClung system the ability to access their home terminal speed dial numbers, especially since these numbers are easily forgotten once programmed (Bozek, col. 1, ll. 15-22). When considering the collective teachings and suggestions of McClung and Bozek, we find this combination “‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement.” *KSR*, 127 S. Ct. at 1740 (quoting *Sakraida*, 425 U.S. at 282). Based on the above, we find that there is ample evidence in McClung and Bozek to support the combination as proposed in the rejection of claim 1 and that the Examiner has, therefore, properly established a prima facie case of obviousness.

For the above reasons, Appellants have not shown error in the obviousness rejection of claim 1 based on the collective teachings of McClung and Bozek. Accordingly, we sustain the rejection of claim 1 and claims 2, 5, 6, 8-13, and 46 which fall with claim 1.

Claim 45

Claim 45 further recites the step of accessing the profile information including speed dial information of the first terminal to establish a call session. The Examiner found that the combination of McClung and Bozek meet the limitations of claim 45 (Ans. 8). Appellants argue that the database used to access the speed dial information in Bozek does not teach the accessing of speed dial information as recited in claim 1 (App. Br. 11; emphasis added). Because claim 1 does not recite accessing speed dial information, we presume Appellants intended to refer to claim 45 and not claim 1. However for purposes of completeness, we refer to our previous

discussion of claim 1 related to how the combination of McClung and Bozek teach accessing profile information and hereby incorporate that discussion by reference.

Moreover, claim 45 recites “accessing speed dial information of the first terminal” and not accessing the first terminal to retrieve the speed dial information. Thus, we find that accessing a database that contains speed dial information of the first terminal meets the above-quoted limitation. In addition, Bozek teaches accessing speed dial information of a first terminal by accessing a home switch or the switch of the first terminal for which the speed dial information is desired when the database does not maintain the speed dial information for the caller (Bozek, col. 3, ll. 1-5 and 26-33; Figs. 1-2). Thus, Bozek teaches accessing speed dial information of a first terminal to establish a call session between the second and third terminal as recited in claim 45.

For the above reasons, we affirm the rejection of claim 45.

Claims 3, 4, 43, and 48

Representative independent claim 3⁵ recites a method of controlling communications in a network including the steps of receiving a call request from a second terminal to initiate a call session with a third terminal and in response to the call request, accessing profile information of a first terminal to establish the call session between the second terminal and the third terminal. The Examiner's rejection essentially finds McClung and Bozek

⁵ Appellants argue claims 3, 4, 43, and 48 as a group (App. Br. 11-12). Accordingly, we select claim 3 as representative of this grouping. *See* 37 C.F.R. § 41.37(c)(1)(vii).

teach all the limitations found in claim 3 (Ans. 5-6). Appellants reiterate the arguments made with respect to claim 1, including that there is no reason to combine the teachings of McClung and Bozek in the fashion claimed and that the combined teachings would not teach or suggest the elements in claim 3 (App. Br. 11-12).

For the reasons discussed previously with respect to claim 1, we are not persuaded that the Examiner erred in rejected claim 3 as being unpatentable based on the collective teachings of McClung and Bozek. Accordingly, we sustain the rejection of claim 3 and claims 4, 43, and 48 which fall with claim 3.

Claim 47

Claim 47 depends from claim 3 and further recites accessing the profile information comprises the step of accessing speed dial information of the first terminal to establish the call session between the second and third terminals. The Examiner's rejection essentially finds McClung and Bozek teach all the limitation found in claim 47 (Ans. 8). Appellants argue claim 47 is allowable for the same reasons as claim 3 and reiterates the argument that Bozek does not teach or suggest the claimed subject matter of claim 47 for the reasons stated with regard to claim 45 (App. Br. 12).

For the reasons discussed previously with respect to claims 3 and 45, we are not persuaded that the Examiner erred in rejected claim 47 as being unpatentable based on the collective teachings of McClung and Bozek. Accordingly, we sustain the rejection of claim 47.

Obviousness Rejection over McClung, Bozek, and AAPA

Regarding claim 7, the Examiner's rejection essentially finds McClung, Bozek, and AAPA teach all the limitations found in claim 7 (Ans. 10-11). Appellants argue there is no teaching in McClung, Bozek, or AAPA of the terminal proxy server associating a logical port of the first terminal with the second terminal (App. Br. 15). As a preliminary matter and as stated previously, one cannot show nonobviousness by attacking references individually.

Furthermore, McClung discloses a telephony system using packet-based network telephony technology (McClung, col. 3, ll. 29-49). AAPA discusses how a terminal proxy server (TPS) is known by one skilled in the art and used in such packet-based network systems. AAPA also explains the TPS functions to reserve a logical port in the switch for a telephony client. By associating a logical port with a client, AAPA provides a solution for directing or routing call control signal messages and other traffic related to a telephony client through a single logical port (Spec. 2:18-25). In our view, one skilled in the art would recognize that applying this fundamental teaching from AAPA to the McClung system would improve that system by further associating all telephony devices affiliated with a phone number (i.e., telephony devices 24a and 24b) with a single logical port in order to direct and route call control signal messages and other traffic to the same phone number. This reservation of the same logical port for both terminals would yield the predictable result of directing and routing control signal messages and other traffic, including phone calls, to all associated terminals. Thus, we find ample rationale on the record before us to combine the teachings of AAPA with McClung to meet the limitations of claim 7.

For the above reasons, Appellants have not shown error in the obviousness rejection of claim 7 based on the collective teachings of McClung, Bozek, and AAPA. Accordingly, we sustain the rejection of claim 7.

Obviousness Rejection over McClung, Bozek, and Alexander

With respect to claim 14, Appellants only refer to the arguments made with claims 1 and 10, and we hereby incorporate those discussions by reference. For the above reasons, Appellants have not shown error in the obviousness rejection of claim 14 based on the collective teachings of McClung, Bozek and the Alexander. Accordingly, we sustain the rejection of claim 14.

Obviousness Rejection over Alexander and Michalewicz

Representative independent claim 37⁶ recites a system that includes a control unit, a plurality of soft client modules executable on the control unit, each soft client module adapted to send a request to a server to select a terminal on a network to clone, and the modules becoming clones of the respective terminals. The Examiner found that the combination of Alexander and Michalewicz teach all the limitations of claim 37 (Ans. 9-10). Appellants argue that: (1) Michalewicz does not disclose virtual telephony devices that constitute soft client modules which become clones of respective terminals and (2) Alexander does to disclose providing multiple

⁶ Appellants argue claims 37-40 as a group (App. Br. 12-15). Accordingly, we select claim 37 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii).

soft client modules executable on a control unit, where the soft client modules become clones of the terminals (App. Br. 13-14; Reply Br. 4).

Regarding Appellants' argument that Michalewicz does not disclose virtual telephony devices that constitute soft client modules which become clones of respective terminals, and that Alexander does not disclose providing multiple soft client modules executable on a control unit, where the soft client modules become clones of the terminals, we refer to our previous discussion of claim 1 regarding attacking references individually where the rejection is based on a combination of references and hereby incorporate that discussion by reference. Moreover, the rejection relies on Alexander, not Michalewicz, to disclose the virtual telephony devices that constitute soft client modules become clones of respective terminals and relies on Michalewicz, not Alexander, to teach providing multiple soft client modules executable on a control unit (Ans. 9-10). As the obviousness rejection of claim 37 is based on the combination of Alexander and Michalewicz, we find these arguments attacking what is missing in Alexander or Michalewicz individually unpersuasive.

Appellants also contend that there is no reason to combine Alexander and Michalewicz because "incorporating the virtual telephony devices of Michalewicz into Alexander would not provide the plural soft client modules that become clones of respective devices" (App. Br. 14). The Examiner has relied on Alexander to teach the limitation of providing a plurality of soft client modules that are clones of telephony devices (Ans. 9-10). Alexander discloses in Figure 4A two telephony devices (i.e., PHONE 2 and PHONE3) that have the phone number or extension (i.e., 1002) (Alexander, col. 8, ll. 60-63). As two telephony devices have the same

number, one device (i.e., PHONE3) is a replicate of the other device (i.e., PHONE2) or a clone as defined by Appellants (Spec. 7:15-16).

Additionally, Alexander discloses the telephony devices include software or soft client modules (Alexander, col. 4, ll. 1-8). Thus, Alexander alone teaches a plurality of soft modules that are clones of respective devices -- which meets the claim limitation of “the soft client modules become clones of the respective terminals” in claim 37.

For the above reasons, Appellants have not shown error in the obviousness rejection of claim 37 based on the collective teachings of Alexander and Michalewicz. Accordingly, we sustain the rejection of claim 37 and claims 38-40 which fall with claim 37.

*Obviousness Rejection over Alexander and AAPA
Claims 16, 18-22, and 44*

Representative independent claim 16⁷ recites an article that includes a storage medium containing instructions that when executed cause a system: (1) to receive a request to establish a first terminal as a clone of a second terminal; (2) in response to the request, associate a logical port between a TPS and a switch module with both the first and second terminal; (3) receive, at the switch module, a call request specifying the second terminal; (4) forward, by the switch module, the call request through the port to the TPS; and (5) route, by the TPS, the call to the first, cloned terminal. The Examiner finds that the limitations of claim 16 are met by the combination

⁷ Appellants argue claims 16, 18-22, and 44 as a group (App. Br. 16-18). Accordingly, we select independent claim 16 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii).

of Alexander and AAPA (Ans. 12-14). Appellants argue that: (a) neither AAPA nor Alexander disclose or teach a first logical port between a TPS and a switch module with both first and second terminals; (2) AAPA does not disclose a system that forwards by the switch module the call request through the logical port to the TPS; and (3) Alexander provides no teaching or indication that it would be desirable to incorporate a logical port between the TPS and the switch module (App. Br. 16-18; Reply Br. 5-6).

As stated previously, nonobviousness cannot be established by attacking references individually where the rejection is based on a combination of references. Regarding the rationale to incorporate the AAPA teachings with Alexander, the AAPA teaches that packet-based network telephony is known to run with a TPS (Spec. 2:18-21). The AAPA teaches including a TPS in the same system as a switch for the telephony clients of telephony system coupled to a LAN, WAN, or Internet in order to act as a proxy server to the telephony clients and to forego a direct connection to the switch (Spec. 2:18-20 and 22-23). Since Alexander discloses the use of a packet-based network with the system to transmit data over a LAN, WAN, or the Internet (Alexander, col. 1, ll. 19-22, col. 2, ll. 57-58, and col. 3, ll. 35-50), ordinarily skilled artisans, in our view, would have recognized that including a TPS in conjunction with the system of Alexander would predictably result in acting as a proxy server to Alexander's telephony client and forego a direct connection to the switch.

Additionally, the AAPA provides details of the operation of the TPS. The TPS reserves a logical port in the switch for the telephony client and routes call control signal messages and other traffic between the client and the switch through the logical port (Spec. 2:23-25). Applying this teaching

of reserving a logical port for a telephony client to Alexander, the TPS would reserve a logical port for a phone number, such as 1002 for PHONE2 as shown in Figure 4A. Additionally, Figure 4A also discloses two phones (i.e., PHONE2 and PHONE3) have the same phone number or extension 1002 or behave as the same telephony client. Because PHONE3 shares the same phone number as PHONE2, one skilled in the art would recognize the same logical port should be associated with both telephone devices in order that call control signal messages and other traffic, including phone calls, associated with the same number are directed to all the desired telephony devices. Thus, the combination of Alexander and the AAPA teaches associating a first logical port between a TPS and a switch with both first and second terminal as claimed.

Moreover, the AAPA teaches that the telephony clients are coupled over a LAN to the TPS and the TPS reserves a logical port in the switch for each telephone client and routes call messages between the client and the switch through the port (Spec. 2:21-25). Given this arrangement and when combined with Alexander, any call specifying a telephony client (i.e., PHONE2) in Alexander will be received by a switch module, forwarded by the switch module through the logical port to the TPS, and routed by the TPS to the first terminal (i.e., PHONE3). Thus, while the word “forward” is not explicitly used in the AAPA, the above disclosure teaches an arrangement in which a call request will be forwarded by the switch module through a logical port to the TPS. This will allow the TPS to act as a proxy server on behalf of multiple telephony clients while no longer having a direct connection to the switch (Spec. 2:18-23) and provides ample rationale as to why ordinarily skilled artisans would have incorporated a logical port

between the TPS and switch module that is associated with a first and second terminal as recited.

For the above reasons, Appellants have not shown error in the obviousness rejection of claim 16 based on the collective teachings of Alexander and AAPA. Accordingly, we sustain the rejection of claim 16 and claims 18-22 and 44 which fall with claim 16.

Claim 17

Claim 17 additionally recites the instructions, when executed, cause the system to further disable the second terminal. The Examiner finds that Alexander teaches this limitation by modifying the alternate number table of Figure 3 to remove the terminal from the list (Ans. 14). Appellants dispute that Alexander discloses disabling the terminal being cloned or the target terminal (App. Br. 19).

Specifically, the Examiner relies on the Figure 3 table to demonstrate how the instructions on the storage medium, when executed, cause the system to: (1) receive a first request to establish a first terminal as a clone of the second terminal and (2) disable the second or cloned terminal when a user modifies the table to remove this terminal from the list (Ans. 14). However, the Figure 3 table does not establish a first terminal is a clone of the second terminal as defined by Appellants (Spec. 7:15-16). Ringing more than one phone simultaneously as Figure 3 shows does not replicate a terminal in accordance with the definition. Some association of a logical port with a first and second terminal must occur before cloning takes place. As stated with respect to claim 16, Figure 4A discloses the request to clone by associating a phone number (i.e., 1002) with two telephony devices

(PHONE2 and PHONE3). There is, however, no suggestion in Alexander or the AAPA to disable or remove the second terminal (e.g., PHONE3) from the Figure 4A table.

In addition, Examiner's proposed modification to the Figure 3 table would not be permitted or would destroy the purpose of the Alexander device. Figure 3 shows that the user is permitted to update the table by removing or disabling *alternate* terminals, not the target terminal, from being rung. That is, Alexander does not discuss updating the target terminal associated with alternate terminals shown in the Figure 3 table. Moreover, as the target terminal is the second terminal or the cloned terminal as the Examiner proposes, disabling this terminal from the Figure 3 table would no longer associate the alternate terminals on the lists with the purported cloned terminal as Alexander intended. As such, the Examiner has not established the factual basis to support the legal conclusion that Alexander discloses both "instructions that when executed cause a system to receive a request to establish a first terminal as a clone of a second terminal" and "the instructions when executed cause the system to further disable the second terminal" as recited in claim 17. Finally, the AAPA does not cure the above noted deficiencies.

For the foregoing reasons, Appellants have shown error in the obviousness rejection of claim 17 based on the collective teachings of Alexander and AAPA. Accordingly, we will not sustain the rejection of claim 17.

*Obviousness Rejection over Alexander, AAPA, and O’Neal
Claims 23, 25-31, and 33-35*

Independent claim 23 recites a control module adapted to define the first terminal as a clone of a second terminal, store a table associating identifiers of the first and second terminals with a logical port, and based upon whether the first terminal or second terminal answered the call request, update the table to indicate that the terminal that answered the call request is the terminal where subsequent call requests containing the logical port are to be directed. The Examiner finds that the combination of Alexander, AAPA, and O’Neal teaches all the limitations of claim 23 (Ans. 15-17). Appellants argue, among other contentions, that “O’Neal does not teach or hint at updating a *table* (that associates identifiers of the first and second terminals with a first logical port) to indicate that one of the first and second terminals that answered the call request is the terminal to which subsequent call requests containing the first logical identifiers are to be directed” (App. Br. 20). We agree to the extent that the teachings of O’Neal when combined with Alexander and AAPA do not teach or suggest updating the table that associates identifiers of the first and second terminals with a first logical port.

As explained above in the context of claim 16, Alexander discloses in Figure 4A, not Figure 3, a control module that defines the first terminal (i.e., PHONE3) as a clone of a second terminal (i.e., PHONE2) because the second terminal has the same phone number or extension as the first terminal. When combined with the teaching of AAPA and also as explained above with respect to claim 16, the Figure 4A table does associate an identifier (phone number or extension) of the first and second terminal with

a first logical port. O’Neal, on the other hand, suggests updating a table that indicates the order in which the terminals should be rung first based on the telephony device that receives the last call (O’Neal, col. 12, ll. 54-57). Thus, at most, O’Neal suggests updating the Figure 3 table or the alternate phone list of Alexander and not the Figure 4A table or the mapping table 120a of Alexander that stores associated identifiers of the first and second terminals.

In addition, Figure 3 lists phone numbers with ring delay time, and Figure 4A includes a table that associates identifiers or the same phone number with the first and second terminals (i.e., PHONE2 and PHONE3). As Figure 3 only includes the phone numbers and not devices to be rung, there is no suggestion in AAPA or O’Neal to modify this table such that future calls will be directed to *one* of two telephony devices (e.g., PHONE2 *or* PHONE3) associated with same phone number or extension. Thus, we do not find that the disclosure of the alternate number list in Figure 3 or mapping table of Figure 4A of Alexander combined with the AAPA and O’Neal suggests that a control module is adapted to store a table that both associates identifiers of the first and second terminals with a first logical port and updates *the* table to indicate that “the one of the first and second terminal that answered the call request is the terminal to which subsequent call requests containing the first logical identifier are to be directed” as recited in claim 23.

For the above reasons, Appellants have shown error in the obviousness rejection of claim 23 based on the collective teachings of Alexander, AAPA, and O’Neal. Accordingly, we will not sustain the rejection of claim 23 and dependent claims 25-31 and 33-35.

DECISION

We have sustained the Examiner's rejection with respect to claims 1-14, 16, 18-22, 37-40, and 43-48. We have not sustained the Examiner's rejection with respect to claims 17, 23, 25-31, and 33-35. Therefore, the Examiner's decision to reject claims 1-14, 16-23, 25-31, 33-35, 37-40, and 43-48 is affirmed-in-part.

No period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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